IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.515 OF 2004

Shri Ananda Namdeo Sawant & Anr. Appellants

Versus

Shri Khandoba God Jejuri Trust,
through Trustees :
Vithal Nana Supugade @
Sawant alias Patil & Ors. .. Respondents

Ms Asha M. Bhambwani for appellants
Mr.G.S.Godbole for respondents

CORAM : P.V.KAKADE, J.
DATE : 22nd JUNE, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District

Judge, Satara dated 11.2.2004 dismissing the appeal of the defendants and confirming the judgment and order passed by Civil Judge, Junior Division, Satara decreeing the suit for possession and mesne profits filed by the plaintiffs which is a Trust registered under the Bombay Public Trust Act.

2. I have heard the learned counsel for the parties. Perused the record.

3. The suit was filed by the plaintiffs for possession of the property from the defendants. It was the case of the defendants that they were permanent tenants of the suit property since their forefathers and they used to offer the yield from the fields for the worship of deity of the trust and maintenance of various religious ceremonies. According to the defendants, the notice issued by the plaintiffs for terminating the tenancy was illegal and therefore, was not binding upon them as per the Act, and on such and other ground the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion holding that the

plaintiffs are entitled to recover the possession of the suit property from the defendants. It was also held that the entire income of the suit land was appropriated for the purpose of plaintiffs trust, which aspect was disputed by the defendants. The plaintiffs were also held entitled to mesne profits. The court finally held that it had jurisdiction to adjudicate the dispute on merits and consequently the suit came to be decreed. The appeal was carried to the Addl. District Court, Satara. The Addl. District Judge after hearing both the parties confirmed the findings recorded by the learned trial judge and dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellants sought to raise two questions, which are so called questions of law. Firstly, it was contended that all the trustees are not joined to the suit, and therefore, the suit was not maintainable in law. Secondly, it was contended that it was not proved that the entire income of the suit property was appropriated for the purpose of the trust. In support of such contentions my attention

was invited to the evidence on record including the cross-examination of the plaintiffs conducted by the defendants. However, perusal thereof, shows that it is not sufficient to substantiate the arguments advanced on behalf of the appellants.

. It must be noted that the Trust is represented by four trustees and it has come in the cross-examination that plaintiff no.2 has died in the year 2000. However, this aspect would not be of any consequence, especially when the suit is filed in the year 1996. It was further submitted that there is no evidence to show that the plaintiffs no.3 and 4 are also the trustees of the said trust. However, it is needless to mention that it was the burden upon the defendants to show that the plaintiffs were not trustees of the trust, when it was specifically contended by them. In absence of any evidence to the contrary both the courts below have held that they are trustees of the properties and the suit is maintainable.

5. Similarly the documents on record are sufficient to show that the income derived from the trust property is subjected to the inspection of the authority of the

Charity Commissioner and therefore, presumption must be raised in favour of the plaintiffs that the entire amounts derived from the properties are applied for the purpose of the trust, unless there is evidence to the contrary which is totally absent.

6. Time and again the Apex Court has held that the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of C.P.C. Moreover, both the courts below in the present case appears to have appreciated the entire evidence on record in proper perspective and have come to the conclusion that the plaintiffs suit deserve to be decreed. No interference is called at this stage and therefore, the appeal stands dismissed.

7. Consequently the Civil Application No.502 of 2004 also stands dismissed.

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